

40.24(13) Inability to practice chiropractic with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

40.24(14) Willful or repeated violation of lawful rule or regulation promulgated by the board.

40.24(15) Violating a lawful order of the board, previously entered by the board in a disciplinary hearing.

40.24(16) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

40.24(17) Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

40.24(18) Indiscriminately or promiscuously prescribing, administering or dispensing any order for other than lawful purpose.

40.24(19) Submission of a false report of continuing education or failure to submit the annual report of continuing education.

40.24(20) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

40.24(21) Failure to comply with a subpoena issued by the board.

40.24(22) Failure to file the reports required by rule 40.32(272C) concerning acts or omissions committed by another licensee.

40.24(23) Repeated malpractice.

40.24(24) Obtaining any fee by fraud or misrepresentation.

40.24(25) Negligence in failing to exercise due care in the delegation of chiropractic services to or supervision of assistants, employees or other individuals, whether or not injury results.

40.24(26) Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code chapter 151.

40.24(27) Failure to maintain clean and sanitary conditions at the premises in keeping with sound public health standards.

40.24(28) Failure to respond, when requested, to communications of the board within 30 days of the mailing of such communication by registered or certified mail.

40.24(29) Failure to report child abuse or dependent adult abuse.

40.24(30) Obtaining third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

- a.* Reporting incorrect treatment dates for the purpose of obtaining payment;
- b.* Reporting charges for services not rendered;
- c.* Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or
- d.* Aiding a patient in fraudulently obtaining payment from a third-party payer.

40.24(31) Practicing without a current license or practicing when a license is lapsed.

40.24(32) Failure to notify the board of a change of name or address within 30 days of its occurrence.

This rule is intended to implement Iowa Code section 232.69.

645—40.25(272C) Procedure for peer review. A complaint made to the board by any person relating to licensure or concerning the professional conduct of a licensee may be assigned to a peer review committee for review, investigation and report to the board.

645—40.26(272C) Peer review committees.

40.26(1) The board may establish or register, or both, one peer review committee with subcommittees in each Iowa congressional district. Each subcommittee shall consist of at least three licensees appointed by the board for a rotating term of one to three years. The board may establish and register other peer review committees in an emergency or under unusual circumstances.

40.26(2) The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board. Each report shall contain the recommendations of the peer review committee relative to disciplinary action by the board.

40.26(3) The board may provide investigatory and related services to peer review committees upon request.

40.26(4) A peer review committee may determine the method to be used in making its investigation or that it is unable to investigate the report upon a complaint, and return the complaint together with an explanation to the board.

40.26(5) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code chapter 272C.

40.26(6) Members of the peer review committee shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

645—40.27(272C) Duties of peer review committees.

40.27(1) The peer review committees shall submit to the board for approval the procedures to be used for review, investigation and handling of all complaints.

40.27(2) The peer review committees shall thoroughly investigate all complaints and make written recommendation to the board.

a. Written recommendations shall contain a statement of facts, the recommendation for disposition, and the rationale supporting the recommendation.

b. The written recommendations shall be signed by the members of the peer review committees concurring in the report.

645—40.28(272C) Board review of recommendations. The board shall consider and act upon recommendations of the peer review committees at the next board meeting held after submission of the written recommendations.

40.28(1) If the board finds that reasonable basis exists for further action, it shall notify the licensee who is the subject of the complaint and the complainant that further action will be taken and state the reasons for its determination. Unless informal stipulation and settlement is arrived at, the board shall proceed to a hearing on the matter in accordance with the procedural process set out in subrule 40.47(9).

40.28(2) Reserved.

645—40.29(272C) Reporting of judgments or settlements. Each licensee shall report to the board every adverse judgment in a malpractice action to which the licensee is a party, and every settlement of a claim against the licensee alleging malpractice. The report together with a copy of the judgment or settlement must be filed with the board within 30 days from the date of said judgment or settlement.

645—40.30(272C) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers and licensees involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, which involve acts or omissions which constitute negligence, careless acts or omissions in the practice of chiropractic shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

645—40.31(272C) Reporting of acts or omissions. Each licensee, having first-hand knowledge of acts or omissions set forth in rule 40.24(272C) shall report to the board those acts or omissions when committed by another person licensed to practice chiropractic. The report shall include the name and address of the licensee and the date, time and place of the incident.

645—40.32(272C) Failure to report licensee. Upon obtaining information that a licensee failed to file a report required by rule 40.31(272C) within 30 days from the date the licensee initially acquired the information, the board may initiate a disciplinary proceeding against the licensee who failed to make the required report.

645—40.33(272C) Immunities. A person shall not be civilly liable as a result of filing a report or complaint with the board or peer review committee, or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of the board. However, such immunity from civil liability shall not apply if the act is done with malice.

645—40.34(272C) Doctor-patient privileged communications. The privilege of confidential communication between the recipient and the provider of health care services shall not extend to afford confidentiality to medical records maintained by or on behalf of the subject of an investigation by the board, or records maintained by any public or private agency or organization, which relate to a matter under investigation. No provisions of Iowa Code section 622.10, except as it relates to an attorney of the licensee, or stenographer or confidential clerk of the attorney, shall be interpreted to restrict access by the board, its staff or agents to information sought in an investigation being conducted by the board.

645—40.35(272C) Confidentiality of investigative files. Complaint files, and investigation files, and all other investigation reports and other investigative information in the possession of the board or peer review committee acting under the authority of the board or its employees or agents which relates to licensee discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the board, its employees and agents involved in licensee discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, a final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

645—40.36(151) Acupuncture.

40.36(1) “Acupuncture” is the procedure of puncturing the skin with needles for treatment.

40.36(2) Rescinded IAB 8/19/92, effective 9/23/92.

40.36(3) Venipuncture for withdrawal of blood is not an acupuncture procedure.

645—40.37(151) Nonprofit nutritional product sales.

40.37(1) Profit shall mean all moneys remaining after the cost of operating a chiropractic practice.

40.37(2) The sale price of the nutritional product may not include a profit exceeding the cost of the practice overhead and the product.

645—40.38(151) Chiropractic insurance consultant.

40.38(1) Definition. The term “*chiropractic insurance consultant*” shall mean an Iowa-licensed chiropractic physician registered with the board who serves as a liaison and advisor to an insurance company and who advises said insurance company of: Iowa standards of recognized and accepted chiropractic services and procedures permitted by the Iowa Code and administrative rules; and advice on the propriety of chiropractic diagnosis and care.

40.38(2) Licensed chiropractic physicians shall not hold themselves out as chiropractic insurance consultants unless they meet the following requirements:

- a. Hold a current license.
- b. Practice chiropractic in the state of Iowa for a minimum of five years.
- c. Be actively involved in a chiropractic practice during the term of appointment as a chiropractic insurance consultant.

40.38(3) Rescinded IAB 8/19/92, effective 9/23/92.

This rule is intended to implement Iowa Code sections 151.1 and 151.11.

645—40.39(151) Adjunctive procedures.

40.39(1) Adjunctive procedures defined. Procedures related to differential diagnosis.

40.39(2) Any applicant for licensure to practice chiropractic in the state of Iowa who chooses to be tested in limited adjunctive procedures, those limited procedures must be adequate for the applicant to come to a differential diagnosis in order to pass the examination.

40.39(3) Applicants for licenses to practice chiropractic who refuse to utilize any of the adjunctive procedures which they have been taught in approved colleges of chiropractic must adequately show the examiners that they can come to an adequate differential diagnosis without the use of adjunctive procedures.

This rule is intended to implement Iowa Code sections 151.1 and 151.11.

645—40.40(151) Physical examination. The chiropractic physician is to perform physical examinations to determine human ailments, or the absence thereof, utilizing principles taught by chiropractic colleges. Physical examination procedures shall not include prescription drugs or operative surgery.

645—40.41(151) Gonad shielding. Gonad shielding of not less than 0.25 millimeter lead equivalent shall be used for chiropractic patients who have not passed the reproductive age during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

645—40.42 to 40.46 Reserved.

DISCIPLINARY PROCEDURE

645—40.47(147,151,17A,272C) Disciplinary procedure.

40.47(1) *Proceedings.* The proceeding for the revocation or suspension of a license to practice chiropractic or to discipline a person licensed to practice chiropractic or the denial of a license, shall be substantially in accord with the following procedures which is an alternative to the procedure stated in Iowa Code sections 147.58 to 147.71.

40.47(2) *Investigations.* The board shall, upon receipt of a complaint in writing, or may upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline.

40.47(3) *Form and content of the written complaint.* The complaint shall be in writing and signed by at least one complainant or an authorized representative of the complainant. (Or an official form may be used. This form may be obtained from the board upon request.)

a. The complaint shall contain the following information:

(1) The full name and address of the complainant.

(2) The full name, address and telephone number, if known, of the respondent.

(3) A concise statement of the facts which clearly and accurately apprises the board of the allegations against the respondent.

b. Reserved.

40.47(4) *Place and time of filing.* The complaint may be delivered personally or by mail to the board administrator of the board. The current office address is Lucas State Office Building, Des Moines, Iowa 50319-0075.

a. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

b. Reserved.

40.47(5) *Investigation of allegations.* In order to determine if probable cause exists for a hearing on the complaint, the board or someone designated by the board shall cause an investigation to be made into the allegations of the complaint or the board may refer the complaint to a registered peer review committee for investigation, review and report to the board. In this regard, the person complained of may be furnished with information concerning the complaint and given the opportunity to informally present a position or defense respecting the allegations of the complaint prior to the commencement of a contested case. This position or defense may be submitted in writing but a personal conference with the board administrator, investigator or peer review committee may be had as a matter of right upon request.

40.47(6) *Investigation report.* Upon completion of the investigation, the investigator or designee shall prepare a report for the board's consideration.

40.47(7) *Informal settlement.* The board or the respondent may request that an informal conference be held to determine whether licensee discipline can be resolved in a just manner and in furtherance of the public interest. Neither the board nor respondent is required to use this informal procedure. If the board and respondent agree to negotiate a settlement, the various points of a proposed settlement, including a stipulated statement of facts, shall be set forth in writing. The proposed settlement shall be binding if approved by the board and signed by both the board chairperson (or a member designated by the chairperson) and the respondent.

40.47(8) Ruling on the initial inquiry.

a. Rejection. If a determination is made by the board to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the board shall be sent to the respondent.

b. Requirement of further inquiry. If a determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

c. Acceptance of the case. If a determination is made by the board to initiate disciplinary action, the board may enter into an informal settlement, issue a citation or warning or recommend formal disciplinary proceedings.

40.47(9) Order for hearing. The board may, upon its own motion or upon receipt of a complaint in writing, and shall, if such a complaint is filed by the commissioner of public health, issue an order fixing the time and place for hearing thereon, a written notice of hearing together with a statement of the charges, shall be served upon the licensee at least 30 days before said hearing in the manner required for the service of notice of the commencement of an ordinary action or by certified mail return receipt requested.

40.47(10) Notice by publication. If the licensee has absented or removed himself or herself from the state, the notice and statement of the charges shall be so served at least 30 days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by said rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the board shall proceed with the hearing as hereinafter provided.

40.47(11) Statement of charges. The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, and shall be in sufficient detail to enable the efficient preparation of the respondent's defense. The statement of charges shall specify the statute(s) and any rule(s) which are alleged to have been violated, and may also include the additional information which the board deems appropriate to the proceeding.

40.47(12) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board.

40.47(13) Notice of hearing. The notice of hearing shall state:

- a.* The date, time and place of hearing.
- b.* A statement that the party may be represented by legal counsel at the hearing.
- c.* A statement of the legal authority and jurisdiction under which the hearing is to be held.
- d.* A reference to the statutes and rules involved.
- e.* A short and plain statement of the matter asserted.
- f.* A statement that the respondent has the right to appear at a hearing and be heard.
- g.* A statement requiring the respondent to submit an answer of the type specified in subrule 40.47(14) within 20 days after receipt of the notice of hearing.

h. A statement requiring the respondent within a period of 10 days after receipt of the notice of hearing to:

- (1) Acknowledge receipt of the notice of hearing.
- (2) State whether or not the respondent will be present at the hearing.
- (3) State whether the respondent will require an adjustment of date and time of the hearing; and
- (4) Furnish the board with a list of witnesses the respondent intends to have called.

40.47(14) Form of answer. The answer shall show venue as "Before the Iowa Board of Chiropractic Examiners" and shall be captioned "Answer".

a. The answer shall contain the following information:

- (1) The name, address and telephone number of the respondent.
- (2) Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
- (3) Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

b. Reserved.

40.47(15) *Request for a more definitive statement.* The respondent may at any time request the board to make the statement of charges more definite and certain, by submitting to the board a written request indicating the matters concerning which a more definite statement is necessary in order to facilitate the preparation of the respondent's defense. The board will respond to a request for a more definite statement within ten days of receipt thereof.

40.47(16) *Prehearing conferences.* The presiding officer or administrative law judge either on a motion or at the request of either the board or the respondent may hold a prehearing conference which shall be scheduled not less than two days prior to the hearing. Notice by ordinary mail shall be given to each party of the date, time and place of the prehearing conference.

40.47(17) *Appearance.* The licensee shall have the right to appear in person or by attorney before the board at the licensee's expense.

40.47(18) *Subpoena powers.* In connection with the initial inquiry set forth in 40.47(8), the board is authorized by law to subpoena books, papers, records and any other real evidence whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (hearing). After service of the notice of hearing contemplated by subrules 40.47(9) and 40.47(10), the following procedures are available to the parties in order to obtain relevant and material evidence:

a. Board subpoenas for books, papers, records and other real evidence will be issued to a party upon request. Application should be made to the board specifying the evidence sought. Subpoenas for witnesses may also be obtained. The board shall issue all subpoenas for both parties upon request.

b. Discovery procedures applicable to civil actions are available to the parties in a proceeding under these rules.

c. Evidence obtained by subpoena or through discovery shall be admissible at the hearing if it is otherwise admissible under subrule 40.47(24) or by statute.

d. The evidence outlined in Iowa Code section 17A.13(2), where applicable and relevant, shall be available to the party upon request.

40.47(19) *Refusal to obey subpoena.* In the event of a refusal to obey a subpoena, the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena, and if the person fails to obey the order of the court, the person may be found guilty of contempt of court. The presiding officer of a hearing panel or an administrative law judge may also administer oaths and affirmations, take or order that depositions be taken, and grant immunity to a witness from disciplinary proceedings initiated either by the board or by other state agencies which might otherwise result from the testimony to be given by the witness to the panel.

40.47(20) *Failure by respondent to appear.* If a respondent, upon whom a proper notice of hearing has been served, fails to appear either in person or by counsel at the hearing, the board or hearing panel shall proceed with the conduct of the hearing, and the respondent shall be bound by the results of such hearing to the same extent as if the respondent were present.

40.47(21) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electrical means, or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained for at least five years from the date of decision. Any party to a proceeding may record, at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

40.47(22) Hearings. A hearing may be conducted before the board or before a three-member hearing panel appointed by the board chairperson. A hearing may also be conducted by an administrative law judge in accordance with Iowa Code section 17A.11.

a. When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice of the profession when holding disciplinary hearings, the board may appoint a panel of not less than three specialists not having a conflict of interest to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

b. When a hearing is held before the board or a three-member hearing panel, the board chairperson or someone designated by the chairperson shall act as the presiding officer. The presiding officer or administrative law judge shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections.

c. The presiding officer and other board members have the right to conduct a direct examination at the outset of a witness's testimony or at a later stage thereof. Direct examination and cross-examination by board members is subject to objections properly raised in accordance with the rules of evidence noted in subrule 40.47(24).

d. The hearing shall be open to the public unless the licensee or the licensee's attorney requests in writing that the hearing be closed to the public.

40.47(23) Order of proceedings. Before giving testimony, each witness shall be informed of the board membership present (hearing panel), of the identity of the primary parties or their representatives, and of the fact that all testimony is being recorded.

a. Hearings before the board or a panel of the board or before an administrative law judge shall generally follow the order established by these rules, subject to modification at the discretion of the board or of the panel of the board conducting the proceedings.

(1) The presiding officer or designee shall read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing.

(2) The assistant attorney general representing the public interest before the board shall make an opening statement.

(3) The respondent or respondents shall each be offered the opportunity to make an opening statement. A respondent may elect to reserve the respondent's opening statement until just prior to the representation of evidence by the respondent.

(4) The presentation of evidence on behalf of the public.

(5) The presentation of evidence on behalf of the respondent(s).

(6) Rebuttal evidence on behalf of the public.

(7) Rebuttal evidence on behalf of the respondent(s).

(8) Closing arguments first on behalf of the public, then on behalf of the respondent, and then on behalf of the public.

b. Reserved.

40.47(24) Rules of evidence—documentary, evidence—official notice.

a. Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.

b. Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

c. Subject to the above requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

d. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy with the original, if available. Accurate copies of the document offered at the hearing shall be furnished to those members of the board sitting at the hearing and to opposing parties.

e. Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

f. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the board. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the board determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

40.47(25) Trial decision.

a. When four or more members of the board preside over the reception of the evidence at the hearing, its decision is a final decision.

b. In order to impose disciplinary action, an affirmative vote of at least four members of the board is required.

c. When a panel of three specialists presides over the reception of the evidence at the hearing, a transcript of the proceedings, together with exhibits presented and the findings of fact of the panel, shall be considered by the board at the earliest practicable time. The respondent or the respondent's attorney, or both, upon notice prescribed by the board, shall have the opportunity to appear personally to present the respondent's position and arguments to the board. The decision of the board is a final decision.

d. If the hearing is conducted by a three-member hearing panel as specified in subrule 40.47(22) or by an administrative law judge, the decision is a proposed decision and subject to the review provisions of 40.47(28).

e. A proposed or final decision shall be in writing and shall consist of the following parts:

(1) A concise statement of the facts which support the findings of fact.

(2) Findings of fact. A party may submit proposed findings of fact and where this is done, the decision shall include a ruling on each proposed finding.

f. Conclusions of law which shall be supported by cited authority or reasoned opinion.

g. The decision or order which sets forth the action to be taken or the disposition of the case.

h. The decision may include any of the following:

(1) That the respondent be exonerated.

(2) Revocation of license.

(3) Suspension of license until further order of the board or for a specified period.

(4) Prohibit permanently, until further order of the board or for a specific period, the engaging in specified procedures, methods or acts.

(5) Probation.

(6) Require additional education or training.

(7) Require reexamination.

(8) Impose civil penalties not to exceed \$1,000.

(9) Issue citation and warning.

(10) Such other sanctions allowed by law as may be appropriate.

40.47(26) Confidentiality. At no time prior to the release of the final decision by the board shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

40.47(27) *Notification of decision.* All parties to a proceeding hereunder shall be promptly furnished with a copy of any final or proposed decision or order either in person or by first-class mail, or by telephone if necessary to ensure that the parties learn of the decision or order first. A final decision shall be sent by certified mail to the licensee's last-known post office address.

40.47(28) *Proposed decision—appeal to board procedures and requirements.* A proposed decision as defined in subrule 40.47(25) becomes a final decision unless appealed in accordance with the following procedure:

a. A proposed decision may be appealed to the board or a quorum thereof by a party to the decision who is adversely affected thereby. An appeal is commenced by serving on the board administrator, either in person or by certified mail, a notice of appeal within ten days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellee.

b. Within ten days after service of the notice of appeal, the appellant shall serve eight copies of the exceptions, if any, together with the brief and argument to the board. The appellant shall also furnish copies to each appellee by first-class mail. Any appellee to the appeal shall have 14 days following service of exceptions and brief on the board to file a responsive brief and argument.

Except for the notice of appeal, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by a member of the board or board administrator.

c. Oral argument of the appeal is discretionary but may be required by the board upon its own motion. At the times designated for filing briefs and arguments either party may request oral argument. If a request for oral argument is granted or such is required by the board upon its own motion, the board administrator shall notify all parties of the date, time and place. The board chairperson or a designated board member shall preside at the oral argument and determine the procedural order of the proceedings.

d. The record on appeal shall be the entire record made before the hearing panel or administrative law judge.

40.47(29) *Motion for rehearing.* Within 20 days after issuance of a final decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought and copies thereof shall be timely mailed to all other parties. The application shall be deemed denied if not granted within 20 days after service on the board administrator.

a. Upon a rehearing, the board may consider facts not presented in the original proceeding if:

(1) Such facts arose subsequent to the original proceedings; or

(2) The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or

(3) The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

b. The decision made upon a rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceeding.

40.47(30) *Filing of decision.* The final decision of the board, presiding officer or administrative law judge shall be filed with the department of health.

40.47(31) *Judicial review and appeal.* Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act.

40.47(32) *Board's decision.* The board's decision shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

40.47(33) *Rules of general applicability.* Ex parte communications, separation of functions, judicial review and appeals shall be in accordance with the terms of the Iowa administrative procedure Act.

40.47(34) *Publication of decisions.* Final decisions of the board relating to disciplinary procedures shall be transmitted to the appropriate professional association(s), Federation of State Chiropractic Boards, and a newspaper(s) of general circulation to be selected by the board.

40.47(35) Reinstatement. Any person whose license to practice chiropractic has been revoked, or suspended by the board, may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

a. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's final decision or from the date of informal settlement.

b. All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked or suspended. All proceedings upon the petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board.

c. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

d. An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law, and must be based upon the affirmative vote of at least four or more members of the board. This order will be published as provided for in subrule 40.41(34).

40.47(36) License denial. Any request to have a hearing before the board concerning the denial of a license shall be submitted by the applicant in writing to the board at the address in subrule 40.47(4) by certified mail, return receipt requested, within 30 days of a mailing of a notice of denial of license.

645—40.48 to 40.50 Reserved.

PRINCIPLES OF PROFESSIONAL ETHICS

645—40.51(147,272C) Principles of chiropractic ethics. The following principles of chiropractic ethics are hereby adopted by the board relative to the practice of chiropractic in this state.

40.51(1) These principles are intended to aid chiropractic physicians individually and collectively in maintaining a high level of ethical conduct. These are standards by which a chiropractic physician may determine the propriety of the chiropractic physician's conduct in the chiropractic physician's relationship with patients, with colleagues, with members of allied professions, and with the public.

40.51(2) The principal objective of the chiropractic profession is to render service to humanity with full respect for the dignity of man. Chiropractic physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

40.51(3) Chiropractic physicians should strive continually to improve chiropractic knowledge and skill, and should make available to their patients and colleagues the benefits of their professional attainments.

40.51(4) A chiropractic physician should practice a method of healing founded on a scientific basis, and should not voluntarily associate professionally with anyone who violates this principle.

40.51(5) The chiropractic profession should safeguard the public and itself against chiropractic physicians deficient in moral character or professional competence. Chiropractic physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

40.51(6) A chiropractic physician may choose whom to serve. In an emergency, however, services should be rendered to the best of the chiropractic physician's ability. Having undertaken the case of a patient, the chiropractic physician may not neglect the patient; and, unless the patient has been discharged, the chiropractic physician may discontinue services only after giving adequate notice.

40.51(7) A chiropractic physician should not dispose of services under terms or conditions which tend to interfere with or impair the free and complete exercise of professional judgment and skill or tend to cause a deterioration of the quality of chiropractic care.

40.51(8) A chiropractic physician should seek consultation upon request; in doubtful or difficult cases; or whenever it appears that the quality of chiropractic service may be enhanced thereby.

40.51(9) A chiropractic physician may not reveal the confidences entrusted in the course of chiropractic attendance, or the deficiencies observed in the character of patients, unless required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.

40.51(10) The honored ideals of the chiropractic profession imply that the responsibilities of the chiropractic physician extend not only to the individual, but also to society where these responsibilities deserve interest and participation in activities which have the purpose of improving both the health and well-being of the individual and the community.

PROCEDURES FOR USE OF CAMERAS AND
RECORDING DEVICES AT OPEN MEETINGS

645—40.52(151,272C) Conduct of persons attending meetings.

40.52(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

40.52(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board person presiding at the meeting.

645—40.53 to 40.60 Reserved.

CONTINUING EDUCATION

645—40.61(272C) Definitions. Rescinded IAB 2/12/97, effective 3/19/97.

645—40.62(272C) Continuing education requirements.

40.62(1) Each person licensed to practice chiropractic in this state shall complete during the biennium ending in an odd-numbered year a minimum of 60 hours of continuing education.

40.62(2) The continuing education compliance period shall extend from January 1 of every even-numbered year to December 31 of every odd-numbered year, during which period attendance at approved continuing education may be used as evidence of fulfilling continuing education requirements for the subsequent biennial renewal period beginning July 1 of the even-numbered years.

40.62(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which meets the requirement herein and is approved by the board pursuant to rule 40.64(151).

40.62(4) Carryover credit of continuing education shall not be permitted.

40.62(5) It is the responsibility of each licensee to finance their costs of continuing education.

40.62(6) If a new license holder is licensed during the first year of the biennial continuing education period, the license holder is only required to complete 30 hours of continuing education for renewal. If a new license holder is licensed during the second year of the biennial continuing education period, the license holder will be exempt from meeting the continuing education requirements for the first license renewal. The new license holder will be required to obtain 60 hours of continuing education for the second license renewal. Effective January 1, 1998, at least 40 percent of the accrued hours must be prescribed credit hours. The remaining hours may be accrued as follows:

1. Not more than 10 percent of the hours from elective, self-study activities.

2. Not more than 10 percent of the hours from prescribed child abuse, dependent adult abuse, or OSHA training hours.
3. Not more than 14 percent of the hours from elective state, district, or organizational meetings.
4. Not more than 20 percent of the hours from elective chiropractic practice management.
5. Not more than 60 percent of the hours from undergraduate teaching at a CCE- or IBCE-approved institution. (Prescribed)
6. Not more than 60 percent of the hours from postgraduate teaching through a CCE- or IBCE-approved institution or organization, but no more than equal to the hours accrued for the initial session per subject matter. (Prescribed)
7. Not more than 60 percent of the hours from proctoring of the National Board examinations.

645—40.63(151) Standards for approval. A continuing education activity shall be qualified for approval if the board determines that:

40.63(1) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

40.63(2) It pertains to common subjects or other subject matters which integrally relate to the current national and international standards of the practice of chiropractic; and

40.63(3) It is conducted by individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program, and is accompanied by a paper, manual or written outline which substantively pertains to the subject matter of the program. Except as may be allowed pursuant to rule 40.71(151) hereof, no licensee shall receive credit exceeding 10 percent of the biennial total required hours for self-study, including TV viewing, video or sound-recorded programs, correspondence work, or research, or by other similar means as authorized by the board.

645—40.64(151) Approval of sponsors, programs, and activities.

40.64(1) Accreditation of sponsors. An approved college or nonprofit organization which desires accreditation as a sponsor of courses, programs, or other continuing education activities, shall apply for accreditation to the board stating its educational history for the preceding two years, including:

- a. Dates and subjects offered.
- b. Total hours of instruction presented.
- c. Names and qualifications of instructors.
- d. Monitoring and certification procedures.

Standard for programs and activities shall meet the requirements set forth in rule 40.63(151).

By January 31 of each year, commencing January 31, 1980, all accredited sponsors shall submit a report in writing to the board disclosing the educational programs provided for Iowa licensees during the preceding calendar year including dates, titles and hours of instruction provided each licensee in a form approved by the board.

The board may at any time reevaluate an accredited sponsor. If after such reevaluation, the board finds there is basis for consideration of revocation of the accreditation of an accredited sponsor, the board shall give notice by ordinary mail to that sponsor of a hearing on such possible revocation at least 30 days prior to said hearing. The decision of the board after such hearing shall be final.

40.64(2) Accreditation for sponsors shall be terminated four years from the date of approval. By January 31, one year previous to the date of termination, each sponsor shall be required to reapply for approval. The application shall include those items listed under rule 40.64(1).

40.64(3) Rescinded, effective August 12, 1981.

40.64(4) Review of programs. The board may monitor or review any continuing education program already approved by the board and upon evidence of significant variation in the program presented from the program approved may disapprove all or any part of the approved hours granted in the program.

40.64(5) When it is necessary to monitor a sponsor of continuing education, the sponsor shall reimburse the board member for necessary traveling and other expenses in accordance with the guidelines of the state of Iowa for board members and per diem at the rate of \$50 per day for each day actually spent in travel and monitoring of the program.

This rule is intended to implement Iowa Code section 272C.2.

645—40.65(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant or licensee shall have the right within 20 days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within 60 days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 40.47(147,151,17A,272C). If the hearing is conducted by an administrative law judge, the administrative law judge shall submit a transcript of the hearing including exhibits to the board after the hearing with the proposed decision of the administrative law judge. The decision of the board or decision of the administrative law judge after adoption by the board shall be final.

645—40.66(272C) Reports and records. Each licensee shall file evidence of continuing chiropractic education satisfactory to the board previous to the date of relicensure in which claimed continuing education hours were completed. A report of continuing chiropractic education on a form furnished by the board shall be sent to the Board Administrator, Iowa Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319-0075, or to any other address as may be designated on the form.

40.66(1) The board relies upon each individual licensee's integrity in certifying to compliance with the continuing chiropractic education requirements herein provided. Nevertheless, the board reserves the right to require, if it so elects, any licensee to submit, in addition to such report, further evidence satisfactory to the board demonstrating compliance with the continuing chiropractic education requirements herein provided. Accordingly, it is the responsibility of each licensee to retain or otherwise be able to have, or cause to be made, available at all times, reasonably satisfactory evidence of such compliance.

40.66(2) The licensee shall maintain a file in which records of the activities are kept, including dates, subjects, duration of programs, registration receipts where appropriate and other appropriate documentations for a period of three years after the date of the program.

645—40.67(272C) Attendance record. The board shall monitor licensee attendance at approved programs by random inquiries of accredited sponsors.

645—40.68(272C) Attendance report. Rescinded IAB 2/12/97, effective 3/19/97.

645—40.69(272C) Exemptions for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa residing within or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of chiropractic in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

645—40.70(272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of chiropractic in the state of Iowa, satisfy the following requirements for reinstatement:

40.70(1) Submit written application for reinstatement to the board upon forms provided by the board, pay the current renewal fee; and

40.70(2) Furnish in the application evidence of one of the following:

a. The practice of chiropractic in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of accredited continuing education hours substantially equivalent under these rules computed by multiplying 30 by the number of years a certificate of exemption shall have been in effect for the applicant. Hours need not exceed 90 hours for reinstatement, if obtained within the past two years, except when there is a demonstrated deficiency for specialized education as determined by the board through a personal interview with the applicant; or

c. Successful completion of the Iowa state license examination, or a special purposes examination approved by the board, conducted within one year immediately prior to the submission of such application for reinstatement.

645—40.71(272C) Exemptions for active practitioners. A chiropractic physician licensed to practice chiropractic shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services, or for periods that the licensee is a resident of another state or district having a continuing education requirement for the profession and meets all requirements of that state or district for practice therein, or for periods that the licensee is a government employee working as a licensed chiropractic physician and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the board. Prior to engaging in active practice in Iowa, the licensee shall submit for board approval evidence of continuing education obtained in another state or district.

645—40.72(272C) Physical disability, illness or exemption of continuing education. The board may, in individual cases involving physical disability, illness or for other just cause determined by the board, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and a physician licensed in the state of Iowa. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability, or illness or other just cause determined by the board upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—40.73(272C) Reinstatement of lapsed license. Application for reinstatement of a lapsed license may not preclude disciplinary actions by the board as provided in this chapter.

40.73(1) A licensee who allows a license to lapse by failing to renew such license within 60 days of renewal date may be reinstated as follows:

a. Submit a completed application for reinstatement of a license to practice chiropractic.

- b. Pay the renewal fee(s) as required by subrules 40.12(2) and 40.12(3).
- c. Have a personal interview with the board at the board's request.
- d. Provide evidence of completion of 30 hours of continuing education for each lapsed year.

Hours need not exceed 90 hours if obtained within the past two years, except when there is a demonstrated deficiency for specialized education as determined by the board through a personal interview.

(1) The board may grant an extension of time of up to one year to allow compliance with continuing education requirements for reinstatement.

(2) An exemption from the required reporting of continuing education for the purpose of reinstatement of an active practitioner may be granted by the board in accordance with rule 40.72(272C).

40.73(2) The board may require a licensee applying for reinstatement to successfully complete the state examination or a special purposes examination when, through a personal interview, the board finds reason to doubt the licensee's ability to practice with reasonable skill and safety.

These rules are intended to implement Iowa Code sections 147.32, 147.76 and 272C.2.

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